

FILED

December 23, 2009

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE LICENSE OF

LEE C.D. HANG FU, M.D.

License No. MA53299

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER
OF DISCIPLINE

THIS MATTER was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, Lee C.D. Hang Fu, M.D., is the holder of License No. MA53299 and was licensed to practice medicine and surgery in the State of New Jersey on July 1, 1989. Respondent's license is currently active.

CERTIFIED TRUE COPY

2. On or about October 8, 2008, the Ohio State Medical Board entered an "Entry of Order" ("Order") against the Respondent which adopted a "Report and Recommendation." The Order provided for the permanent revocation of Respondent's certificate to practice medicine and surgery, said revocation to be stayed and Respondent's license suspended for an indefinite period of time, but not less than one year. Prior to reinstatement, Respondent is required to meet certain terms and conditions, including successful completion of a professional ethics course; completion of a clinical competence assessment and any recommended remediation plan; and submission of a practice plan. Thereafter, upon reinstatement, Respondent shall be placed on probation for a period of at least two years subject to terms, conditions and limitations.

3. More specifically, the Ohio State Medical Board found that Respondent violated Ohio laws, including office-based surgery rules, in that he: conducted many surgeries, including liposuction surgery under tumescent local anesthesia, at his office setting in Fairview Park after the office-based surgery requirements went into effect on January 1, 2004; did not timely seek accreditation for his office; did not obtain accreditation for his office; used moderate sedation/analgesia; did not hold privileges to provide moderate sedation/analgesia; used oversized cannulas during liposuction surgeries; did not fully comply with the statutory notice obligations for physicians who do not carry medical

malpractice insurance; and made statements in interrogatories that were intended to mislead the Ohio State Medical Board.

CONCLUSION OF LAW

1. The above disciplinary action taken by the Ohio State Medical Board provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g) in that Respondent's Ohio medical certificate was revoked.

DISCUSSION ON FINALIZATION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline ("POD") was entered by this Board on June 12, 2009 and served upon Respondent. The POD was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

The Respondent, through his legal counsel, responded to the POD by letter dated July 2, 2009. Deputy Attorney General Michelle Albertson responded by letter dated August 10, 2009. Thereafter,

Respondent submitted another response on his own behalf by letter dated August 31, 2009.

In his responses, Respondent requested a personal appearance to demonstrate that his actions were the result of a good faith misunderstanding of the new office based surgery rules of the Ohio Board, and that despite the revocation of his Ohio license, the suspension of his New Jersey medical license is too harsh a penalty. More specifically, in support of his good faith misunderstanding argument, Respondent explained that he timely applied for accreditation, which was delayed due to renovations in his office building. As a result, he requested an extension of time to obtain accreditation, but was not informed by the Ohio Board that he would not be compliant during that time. Rather, Respondent stated that his office staff called the Ohio Board for clarification and was provided with erroneous information that during the accreditation process he would be considered in compliance. Respondent states that he immediately ceased practice upon receiving notification from the Ohio Board of his noncompliance.

Finally, Respondent stated that he acted in good faith in providing what he erroneously considered to be "minimal sedation." Respondent argues that his failure to comply with the Ohio Board's regulations is simply a technical violation since there was no patient harm. Finally, Respondent argues that his inaccurate

answers to interrogatories were simple errors and that it was not his intent to deceive the Ohio Board.

This Board's finding of a violation is based solely upon the revocation of Respondent's Ohio Certificate. However, taking into consideration Respondent's good faith arguments for mitigation purposes, the Board finds that Respondent had an obligation to meet the Ohio Board's rules and that he admittedly failed to do so. Further, the Board finds that Respondent's reliance upon a telephone conversation between his office staff and the Ohio Board is misplaced and that his failure to understand "minimal sedation" to be troubling. Notably, the Ohio Board considered similar arguments made by the Respondent at a hearing, which resulted in the revocation of his Certificate.

Respondent's submissions were reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies have been raised. The Board finds that the Respondent did not dispute the Findings of Fact or Conclusions of Law in his response. Finally, the Board is unpersuaded by Respondent's submissions and finds that it does not warrant a hearing, modification or dismissal of the POD.

ACCORDINGLY, IT IS ON THIS 23rd day of Dec, 2009,
ORDERED THAT:

1. Respondent's license to practice medicine and surgery in the State of New Jersey shall be, and hereby is, SUSPENDED until

such time as he holds an active, unrestricted certificate to practice medicine and surgery in Ohio.

2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a Committee thereof) and has the burden to demonstrate that he is fit to practice medicine in this State and, further, demonstrate that he holds an active, unrestricted certificate to practice medicine and surgery in Ohio. Any practice in this State prior to said appearance shall constitute grounds for the charge of unlicensed practice. In addition, the Board reserves the right to place restrictions and/or limitations upon Respondent's practice should his license be reinstated in this State.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: _____

Paul C. Mendelowitz, M.D.
Board President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.